Editor's note: Reconsideration denied, decision sustained -- See Order dated Aug. 17, 1983, at 307A th C below.

WILLIAM A. STEVENSON
ALTEX OIL CORP
IMPERIAL RESOURCES, INC.
DONALD W. STEVENSON
OVERTHRUST PARTNERSHIP

IBLA 83-364
83-365
83-385 Decided June 7, 1983

Appeals from decisions of Nevada State Office, Bureau of Land Management, dismissing protests against the inclusion of special stipulations in oil and gas leases. N 34055, N 35554, N 34269, N 32030, N 31683, and N 31735.

Affirmed.

1. Notice: Generally -- Oil and Gas Leases: Noncompetitive Leases -- Oil and Gas Leases: Stipulations

   Where a noncompetitive over-the-counter oil and gas lease issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. However, the offeror's consent to the additional stipulation will be assumed, and the lease presumed to be validly issued, unless the offeror objects to the stipulation within 30 days of its receipt. Any deficiency in the notice procedure is cured when the offeror fails to object timely to imposition of the new stipulation.

APPEARANCES: Robert G. Pruitt III, Esq., Salt Lake City, Utah, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Appeals have been taken by William A. Stevenson, Altex Oil Corporation, and Imperial Resources, Inc., from decisions of the Nevada State Office, Bureau of Land Management (BLM), dated January 11, 1983, which dismissed their protests against inclusion of special stipulations in oil and gas leases N 34055 and N 35554, issued July 1, 1982, and lease N 34269 issued August 1, 1982; and by Donald W. Stevenson from dismissal of his protest against inclusion of special stipulations in oil and gas leases N 32020, issued June 1, 1982, and N 31683, issued July 1, 1982. Appeals have been taken by Overthrust Partnership and Imperial Resources, Inc., from BLM decisions of January 19, 1983, dismissing their protests against inclusion of special stipulations in oil and gas lease N 31735 issued July 1, 1982. Because the issues are identical, the Board has consolidated the appeals, sua sponte, for consideration. 1/

When BLM issued the oil and gas leases here involved, it made each lease subject to a special stipulation relating to wilderness protection, and to a special stipulation imposing restrictive measures for protection of the environment. Neither stipulation had been announced to the lessees before issuance of the leases.

Appellants complain that there was no indication on the master title plats, the oil and gas plats, or the historical index that the areas sought to be leased would be subject to special leasing restrictions nor any evidence in the public land records that special lease stipulations would be imposed as provided by item 5(c) of the Special Instructions on the lease offer form. Appellants also complain that the language of the stipulations is difficult to understand, seeming to indicate that the lessees' operations would be subject to nebulous "restrictive measures," which may be applied by BLM and unidentified "others." The stipulations made no reference to any terms of the lease, Departmental rules or regulations, or applicable statutes. Appellants contend that the holding in Emery Energy, Inc., 64 IBLA 175 (1982), and 64 IBLA 275 (1982), should be applied in their cases, not the holding in Emery Energy, Inc. (On Reconsideration), 67 IBLA 260 (1982).

1/ It is observed that withdrawals or partial withdrawals were filed within 30 days after the leases had been executed on behalf of the United States for five of the six leases involved in these appeals. BLM advised each lessee that withdrawal of the lease offers could not be accepted after issuance of the leases. 43 CFR 3110.1-4(a). None of the lessees appealed that decision of BLM. Consequently, each of these cases can be distinguished from Robert B. Schafer, 71 IBLA 191 (1983), where the lessee filed withdrawals of his offers within 30 days of lease issuance, objecting to stipulations imposed without his prior knowledge. BLM declined to accept the withdrawals of the offers after the leases had issued. Schafer filed timely notice of appeal from the BLM refusal to accept the withdrawals. This Board reversed BLM and directed refund of advance rental payments.

After consideration of the arguments of appellants, the Board adheres to its holding in Emery Energy, Inc. (On Reconsideration), supra, that:

> Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. However, the offeror's consent to the additional stipulation will be assumed, and the lease presumed to be validly issued, unless the offeror objects to the stipulation within 30 days of its receipt. Any deficiency in the notice procedure for the stipulation is cured when the offeror fails to object timely to imposition of the new stipulation.

Appellants made other arguments which we have considered, but which have not persuaded us to depart from the holding in Emery Energy, Inc. (On Reconsideration), supra, that a lessee will be considered to have accepted the special stipulations imposed on an oil and gas lease unless a protest to the inclusion of the stipulations is made to BLM within 30 days of issuance of the lease.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

August 17, 1983

IBLA 83-364, 83-365, 83-385	:	N 34055, N 35554, N 34269,
73 IBLA 305 (1983)	:	N 32020, N 31683, N 31735
	:	
WILLIAM A. STEVENSON, ALTEX OIL	:	Oil and Gas
CORP., IMPERIAL RESOURCES, INC.,	:	
DONALD W. STEVENSON, OVERTHRUST	:	Petition for Reconsideration,
PARTNERSHIP	:	Decision Sustained

ORDER

By decision of June 7, 1983, William A. Stevenson, Altex Oil Corp., Imperial Resources, Inc., Donald W. Stevenson, and Overthrust Partnership, 73 IBLA 305 (1983), this Board affirmed the Nevada State Office, Bureau of Land Management, decision dismissing protests of appellants against inclusion of special stipulations in their noncompetitive oil and gas leases, N 34055, N 35554, N 34269, N 32030, N 31683, and N 31735. The decision stated that the Board adheres to the holding in Emery Energy, Inc. (On Reconsideration), 67 IBLA 260 (1982), that lessees will be considered to have accepted special stipulations imposed on their oil and gas leases unless they protest to BLM within 30 days of receipt of the issued lease.

Appellants have petitioned for reconsideration en banc, stating that the Board applied Emery Energy, Inc. (On Reconsideration), supra, retroactively against them, an abuse of discretion, citing Stewart Capital Corp. v. Andrus, 701 F.2d 846 (10th Cir. 1983); that attachment of contingent right stipulations to the leases was violative of written BLM procedures, which at the time the leases were issued required BLM to obtain agreement from the offeror for the special stipulations prior to lease issuance; that the Board decision violates fundamental contract law; and that the Board failed to address issues raised by appellants in their statement of reasons. Appellants assert they have not exercised any rights under the leases, which have been relinquished by them, so that they should be refunded the rental payments made for the first lease year.

In their statements of reasons to the Board, appellants argued that upon receiving the leases variously issued as of June 1, July 1, and August 1, 1982, they had relied upon the holding of the Board in Emery Energy Inc., 64 IBLA 175 (1982), that an oil and gas lease is not binding upon a lessee where it is issued without notice of special stipulations. Appellants do not now, nor did they in the earlier appeal, claim that they had expressed any questions or protest to BLM concerning the stipulations about which they had no previous notice. Such questions would seem to be an action which prudence.

would indicate should have been taken as BLM would assume the leases were accepted with the special stipulations in the absence of any protest or question. See John D. LaRue, 66 IBLA 347 (1982); Security Resources Corp., 70 IBLA 319 (1983).

The Board reconsidered Emery Energy, Inc., supra, upon motion of BLM, and sustained the earlier holding that a lease is not binding upon a lessee in the absence of the offeror's consent to imposition of special stipulations, but added that the lessee's consent to the stipulations will be assumed where no objection is voiced by the lessee within 30 days of receipt of the issued lease.

Appellants herein argue that application of the 30-day period of protest, based on Emery Energy, Inc. (On Reconsideration), supra, issued September 27, 1982, to their leases issued as of June 1, July 1, or August 1, 1982, was a retroactive application because the 30-day period for them to protest had passed, and they, to their detriment, had relied on the initial Emery Energy, Inc., decision issued May 26, 1982. We believe that the present case is distinguishable from the retroactive application of a regulation interpretation overruled by the court in Stewart Capital Corp. v. Andrus, supra. The initial decisions captioned Emery Energy, Inc., published at 64 IBLA 175 and 64 IBLA 285, upon which petitioner allegedly relied, did not hold that leases issued with additional stipulations of which the offeror had no prior notice were void, but rather that they were voidable in the absence of lessee's consent to the stipulations. In those cases, lack of assent to the stipulations was promptly manifested upon receipt of the leases with the attached stipulations. Petitioner's action in waiting more than 4 months after lease issuance to protest the attached stipulations is inconsistent with a lack of assent to the leases. As stated above, appellants should have indicated their dissatisfaction with the leases to BLM upon receipt, when they were subject to stipulations. From the dates of issuance of the leases until their protests were filed in November 1982, appellants had full control over the leased lands. We cannot accept their present argument that application of Emery Energy, Inc. (On Reconsideration), supra, to their leases is a retroactive application of a decision.

As appellants did not reject the "counter offers" which BLM sent them, i.e., the leases with the additional special stipulations, but rather appeared to accept the leases until their very belated protests were filed several months later, we are constrained to adhere to the decision, William A. Stevenson, et al., 73 IBLA 305 (1983).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision in

William A. Stevenson, Altex Oil Corp., Imperial, Resources, Inc., Donald W. Stevenson, Overthrust Partnership, 73 IBLA 305 (1983), is sustained.

Douglas E. Henriques
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

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